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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
) CC Docket No. 94-1
Price Cap Performance Review)
for Local Exchange Carriers;)
Treatment of Video Dialtone Services)
Under Price Cap Regulation)

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BELL ATLANTIC REPLY COMMENTS

Introduction and Summary

In its initial comments, Bell Atlantic¹ proposed specific Part 69 rule changes that would facilitate identification of costs for a video dialtone price cap basket by treating video dialtone costs separately, and allocating these costs on a basis consistent with existing rules. In contrast, the calls by other commenters for more extensive rule changes ignore prior Commission decisions that correctly found that such changes would be disruptive and are unnecessary. There is no reason for a different result here, and the proposals for more extensive rule changes should again be rejected.² In addition, the Commission's mandated *de minimis* threshold before video dialtone costs must be

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

² Indeed, as suggested by BellSouth, any separate allocation is unnecessary and unwarranted for companies that have elected no sharing plans under price caps. The isolation of video dialtone costs is irrelevant under pure price cap regulation, where prices are unrelated to changes in costs. *See* Comments of BellSouth Telecommunications, Inc. at 3 (filed Oct. 27, 1995).

removed from sharing calculations should be adopted in an administratively simple manner that is based on the true incremental costs of video dialtone service.³

1. The limited Part 69 rule changes proposed by Bell Atlantic will properly allow for appropriate allocation of video dialtone costs.

Bell Atlantic was the only party to offer specific rule changes to Part 69 in order to correctly allocate video dialtone costs.⁴ These proposed rule changes are consistent with the Commission's existing allocation system. Bell Atlantic also provided a suggested definition of video dialtone charges, which recognizes the diverse potential of video dialtone and would avoid the need for repeated waiver applications for every variation in service. Moreover, by using the Commission's existing rules as a starting point, Bell Atlantic's proposal is consistent with the Commission's decision in the Video Dialtone Reconsideration Order that its rules should not be reconfigured in a misguided effort to create video dialtone-specific cost allocation rules.⁵ Putting video dialtone on the same footing as other services will result in consistent rules that are not overly burdensome to implement and, as the Commission recognized, will not create requirements that may prove totally inappropriate once the market for broadband services begins to mature.⁶

³ See Second Report and Order and Third Further Notice of Proposed Rulemaking (rel. Sept. 21, 1995) ("Third Notice").

⁴ Bell Atlantic Comments, Appendix (filed Oct. 27, 1995).

⁵ *Telephone Company-Cable Television Cross-Ownership Rules, Sections, 63.54-63.58*, 10 FCC Rcd 244, ¶ 164 (1994) ("Video Dialtone Reconsideration Order").

⁶ Video Dialtone Reconsideration Order, ¶¶ 164, 169, 188

Even MCI concedes that the appropriate methodology should “follow as closely as possible” the costing principles “used in Part 69 today.”⁷

In contrast, cable companies repeat their erroneous and rejected argument that “there is no prescribed mechanism in place to separate video costs from telephone costs.”⁸ This argument just assumes away existing Commission cost allocation rules, even though the Commission specifically found that these rules were adequate to address allocation of video dialtone costs.

Without acknowledging this Commission decision, the cable companies advocate a complete re-write of the rules to require that video dialtone costs be allocated under the Part 64 rules that today are used to allocate costs between regulated and non-regulated services.⁹ But such a rule change would require service-specific allocation of Part 64 costs, a concept rejected by the Commission as unnecessary and inappropriate.¹⁰ More fundamentally, video dialtone transport is a regulated service and there is no basis for

⁷ Comments of MCI Telecommunications Corp. at 7 (filed Oct. 27, 1995) (“MCI Comments”).

⁸ Comments of Comcast Cable Communications, Inc. and Cox Enterprises, Inc. (filed Oct. 27, 1995) (“Comcast Comments”).

⁹ NCTA also argues that projected tariff costs should be calculated on the same basis as historic costs are allocated. Comments of the National Cable Television Association, Inc. in the Third Further Notice of Proposed Rulemaking at 5 (filed Oct. 27, 1995). But *historic* costs do not exactly match tariff cost *projections*, which are based on the average characteristics of the required facilities and can not be predicted with 100% accuracy. Moreover, the Commission has already rejected NCTA’s argument and nothing new is offered in cable comments here. *See* Video Dialtone Reconsideration Order, ¶ 214 (“We decline at this time to amend the new services test specifically for video dialtone services”).

¹⁰ “It is not [the Commission’s] purpose to seek to attribute costs to particular nonregulated activities for purposes of establishing a relationship between cost and price.” *Separation of Costs of Regulated Telephone Service From Costs of Nonregulated Activities*, 2 FCC Rcd 1298, 1304, ¶ 40 (1987).

singling out particular regulated services for special treatment at a Part 64 level. Indeed, the Commission rejected this specific argument when it was previously raised by the cable companies.¹¹ Moreover, the practical effect would be to remove video dialtone costs prior to Part 36 jurisdictional separations, which would undermine the ability to differentiate interstate from intrastate video dialtone costs.¹²

Other commenters argue that a Part 36 rule change is required.¹³ This argument has also already been rejected by the Commission,¹⁴ and Bell Atlantic has previously identified specific existing Part 36 rules that permit video dialtone costs to be properly identified and categorized.¹⁵ Several commenters argue that, absent a rule change, Part 36 requires allocation of costs on the basis of bandwidth.¹⁶ In fact, Part 36 says nothing about allocating costs by bandwidth.¹⁷ Section 36.151(c) recognizes that cable and wire facilities may be categorized by varying methods depending on the specific “accounting

¹¹ Video Dialtone Reconsideration Order, ¶ 179.

¹² Cable companies assume that video dialtone service will be “predominantly” interstate. *See* Comcast Comments at 2. It is far too early in the development of the video dialtone market to reach such a conclusion, given the potential of server-based pointcast systems that are capable of providing wholly intrastate services.

¹³ *See, e.g.*, AT&T Comments at 9 (filed Oct. 27, 1995).

¹⁴ *See* Video Dialtone Reconsideration Order, ¶¶ 186-87.

¹⁵ *See Reporting Requirements on Video Dialtone Costs and Jurisdictional Separations for Local Exchange Carrier Offering Video Dialtone Services*, AAD 95-59, DA 95-1409, Comments of Bell Atlantic, Exhibit 2 at 5-7 (filed July 26, 1995) (“Reporting Requirement Comments”).

¹⁶ *See* Comments of the General Service Administration at 6-7 (filed Oct. 27, 1995) (“GSA Comments”); Comcast Comments at 6.

¹⁷ Section 36.153(a)(1) -- cited by Comcast (p.6) -- allows costs to be allocated based on an analysis of sections of cable, but such a measure has nothing to do with bandwidth. Bandwidth is a function of the type of circuit equipment used and not simply a count of the number of fibers.

and engineering records.”¹⁸ This suggests exactly the type of investment-based categorization used by Bell Atlantic.

One commenter, MCI, would avoid *any* reasoned apportionment of costs, and instead would allocate costs between video and all other services on a 50/50 basis.¹⁹ As Bell Atlantic explained in its initial comments, a fixed allocator would lock-in allocations that make no sense, either as a general matter or for use with for individual technologies.²⁰ MCI’s claim that video dialtone creates a second loop is wrong. In today’s world, multiple services share a variety of network equipment and distribution facilities, including both copper wires and fiber optic cables. No second loop is necessary to accommodate video dialtone service, and no second loop is created.

2. The *de minimis* threshold should be based on true incremental costs.

In ordering a *de minimis* threshold prior to removal of video dialtone costs for sharing calculations, the Commission sought to avoid imposing an “unnecessary administrative burden.”²¹ A number of commenters offered suggested methodologies

¹⁸ 47 C.F.R. § 36.151(c).

¹⁹ MCI Comments at 7-8.

²⁰ Bell Atlantic Comments at 4. *See also Amendment to the Bell Atlantic Telephone Companies Tariff FCC No. 10*, CC Docket No. 95-145, Bell Atlantic Direct Case, Introduction and Summary, Exhibit A, Affidavit of William E. Taylor, ¶ 11 (filed Oct. 26, 1995) (“Taylor Dover Affidavit”) (“Any attempt to use a 50/50 allocation of common costs between telephony and video services to set prices has no reasoned basis.”).

²¹ Third Notice, ¶ 35

that were consistent with the Commission's goal.²² For example, Bell Atlantic suggested only slightly modifying the Commission's proposal by using Part 32 cost information to measure dedicated video dialtone costs, rather than relying on information generated by the duplicative and burdensome reporting requirements of Responsible Accounting Officer Letter No. 25.²³

To simplify the process even more, one commenter suggested a *de minimis* threshold should be reached when video dialtone revenues reached 2% of overall interstate revenues.²⁴ Such a methodology better reflects the Commission's goals in mandating a threshold. Using revenues as a basis to calculate the threshold is the least burdensome methodology. Revenues, which are already reported to the Commission, are easier than costs to monitor and audit. Use of revenues would avoid any interpretative differences on the correct amount and can be determined without special studies or allocations. Moreover, revenues would be less susceptible to differences based on particular technologies or network configuration used by individual companies.

If the Commission should nevertheless choose to base its *de minimis* threshold on costs, the appropriate standard, as recognized by the Commission, is dedicated video

²² In addition to establishing a threshold level, the Commission should also recognize that service trials of video dialtone are by nature *de minimis*, and should be excluded from any cost allocation requirements. *See* BellSouth Comments at 3.

²³ Bell Atlantic Comments at 4-5.

²⁴ Comments of U S West Communications, Inc. at 2 (filed Oct. 27, 1995).

dialtone costs.²⁵ While the Commission's cost allocation and pricing rules require an allocation of shared costs, these costs are not truly incremental to video dialtone service.²⁶ To include non-incremental costs in the calculation would undermine the Commission's intent in establishing a *de minimis* threshold. It is only when the costs unique to video dialtone, i.e. the true incremental costs, are above a minimal threshold, that the service has reached a size level where it is appropriate to remove costs from the sharing calculation.

Contrary to cable companies' claims,²⁷ use of dedicated investment raises no cross-subsidy concerns. By definition, there can be no cross-subsidy when incremental costs are covered. Under current rules, video dialtone prices are set to recover not only the incremental cost of the service, but a portion of common costs as well.²⁸

The California Cable Television Association appears to argue that a *de minimis* threshold based on dedicated costs will encourage "selective deployment" of video dialtone service.²⁹ While it is not surprising that cable companies wish to delay initial deployment of video dialtone service and deny their competitors any early experience in the marketplace, it is hard to understand why such self-serving competitive concerns should become public policy. Clearly, California Cable is wrong both practically and in

²⁵ If the Commission does retain a cost-based *de minimis* standard, it would be appropriate to use a direct comparison to total interstate investment, such as the 1% threshold suggested by Pacific Bell. *See* Comments of Pacific Bell in Response to Third Further Notice of Proposed Rulemaking at 2 (filed Oct. 27, 1995).

²⁶ *See* Taylor Dover Affidavit, ¶ 13.

²⁷ Comcast Comments at 7-8; Comments of the California Cable Television Association in the Third Further Notice of Proposed Rulemaking at 12 (filed Oct. 27, 1995) ("CCTA Comments").

²⁸ Taylor Dover Affidavit, ¶ 13.

²⁹ CCTA Comments at 12.

principle to suggest that deployment of video dialtone service must either be ubiquitous or nonexistent.

A number of commenters opposed to the *de minimis* threshold seek unreasonably low thresholds. For example, GSA would limit the threshold to \$500.³⁰ This is equivalent to one thousandth of one percent of the investment in Bell Atlantic's broadband upgrade in Dover, Township, New Jersey or less than the cost of just the drop wires to two houses. This and similar suggestions from the cable companies are nothing more than veiled efforts to undermine the Commission's order and effectively eliminate the threshold requirement in total.


CONCLUSION

For the foregoing reasons, the Commission should implement the Part 69 rule changes suggested by Bell Atlantic, and establish an easy to administer threshold for *de minimis* treatment based on suggestions by the local exchange carriers.

³⁰

GSA Comments at 3-5.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Edward Shakin", written over a horizontal line.

Edward Shakin

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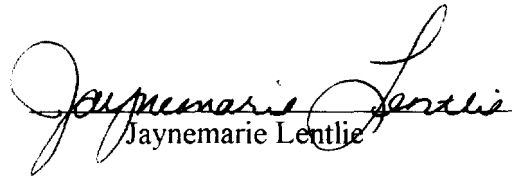
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Bell Atlantic Reply Comments" was served
this 20th day of November, 1995 by hand on the parties on the attached list.


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